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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,901	12/01/2000	Michael J. Recchia JR.	652 P 006	3682

27717 7590 05/16/2002

SEYFARTH SHAW  
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CHICAGO, IL 60603-5803

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/16/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,901

Applicant(s)

RECCHIA, MICHAEL J.

Examiner

Robert Madsen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a multilayer onion bag comprising 2 thermoplastic sheets and a mesh sheet, classified in class 426, subclass 106.
- II. Claim 16-18, drawn to a bag comprising a mesh sheet, classified in class 383, subclass 117.
- III. Claim 19, drawn to a multilayer bag comprising both a mesh and a film sheet, classified in class 383, subclass 117.

Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a reinforcing strip extending along the upper edge of a side wall. The subcombination has separate utility such as bag for beach toys.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions Invention II is made requires center mesh section with thermoplastic ends that form bag walls (i.e. a thermoplastic bag comprising

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a mesh sheet connected to each end that divides the bag into two halves) and is empty whereas, Invention I requires a third sheet and contains onions.

Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions Invention II is made requires center mesh section with thermoplastic ends that form bag walls (i.e. a thermoplastic bag comprising a mesh sheet connected to each end that divides the thermoplastic bag into two halves) whereas Invention I requires the mesh to be an outer wall.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Gary Ellis on April 25, 2002 a provisional election was made with traverse to prosecute the invention of Group 1, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the phrase "produce and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). For examination purposes, "produce" will be considered.

Also in claim 1, "the mesh sheet being spaced from the one bag end" (line 8) is indefinite since it is unclear to which bag end applicant is referring. For examination purposes, "the one bag end" is taken to be the end where the thermoplastic sheet is folded over.

Claims 3 and 4 recite the limitation "plastic mesh sheet". There is insufficient antecedent basis for this limitation in the claim. For examination purposes this is taken to mean "said mesh sheet".

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

Regarding claim 1, the omitted structural cooperative relationship is the location of the first and second seal. The second seal is adjacent a second end that is "opposed to the first seal line", but the first seal line is not given any specific location (i.e. "spaced

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from the ends of the bags" and "spaced from the one bag end") other than extends across the width of the bag. Therefore the statement "opposed to the first seal line" omits essential cooperative relationship of the two seals. For examination purposes the bag has two ends with the first seal proximate a first end and a second seal line proximate a second end.

Regarding claims 6 and 7, the omitted structural cooperative relationships are the "inside" and "outside" of the mesh sheet. It is unclear how the third sheet is "positioned inside of said mesh sheet" and the first sheet is "outside of said mesh sheet". For examination purposes inside the mesh sheet is taken to mean attached to the side of the mesh sheet facing the interior of the bag and outside is taken to mean attached to the side of the mesh sheet facing the exterior of the bag.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamagata (JP411130089A)

Yamagata may be interpreted in two ways and therefore two separate rejections under 35 U.S.C. 102(b) have been made. Interpretation 1 follows.

Regarding claims 1-4, Yamagata teaches a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (item 30) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata teaches a first seal (item 12 a) close to the first end of the mesh sheet (item 3) and first end of the first thermoplastic sheet (item 8/9) as recited in claim 2 (See Figure 5A), and the first sheet folds over the mesh sheet (item 8/9 folds over to seal at item 12 a). Yamagata also teaches a second seal (item 5c furthest from 10(a)) and a third as recited in claims 3 and 4(i.e. item 5c closest to 10(a)) between the first sheet (item 2) and a second thermoplastic sheet (item 30), and the first sheet (item 2/10a,b) extending beyond the mesh sheet (item 3) to lie against the second sheet ( item 2 extends beyond item 3 to lie against item 30 at item 10a in Figure 5B) (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030).

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamagata (JP411130089A)

Yamagata may be interpreted in two ways and therefore two separate rejections under 35 U.S.C. 102(b) have been made. Interpretation 2 follows.

Regarding claims 1-4, Yamagata teaches a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (synthetic resin tape item 11) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata teaches a first seal line at 5c (Figures 5A and 5B), which is close to the first end of the mesh sheet and first end of the first thermoplastic sheet as recited in claim 2, and the first sheet folding over the mesh sheet (items 2/10 fold over item 3 in Figure 5B). Yamagata also teaches a second seal (item 12a furthest from item 8 in Figure 5A) and a third seal (item 12a closest to item 8 in Figure 5A), as recited in claims 3 and 4 is between the first sheet (item 2) and second thermoplastic sheet (item 11), and spaced from the mesh sheet (item 3). Furthermore, the first sheet (item 2/8/9) extends beyond the mesh sheet (i.e. beyond 12 a) to lie against the second sheet when in the folded (i.e. when item 9 is sealed to 12a) position. (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030).

Claims 1-4, 14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Fox et al. (US 6190044B1).

See Figures 1-10, Abstract, Column 4, line 16 to Column 5, line 67).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) as applied to claim 1 above, Interpretation 1 and Interpretation 2, further in view of Shigeta et al. (JP 407315391A).

Yamagata teaches produce, but is silent in teaching onions. However, Shigeta et al. are relied on as evidence of the conventionality of these produce bags comprising a mesh and thermoplastic sheet containing onions (See English Abstract, English Detailed Description Paragraphs 0008-0009). Therefore, it would have been obvious to include onions in the bag of Yamagata since one would have been substituting one known produce for another in a bag comprising a mesh sheet and a thermoplastic sheet.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) as applied to claims 1-4 above, Interpretation 1.

Regarding claim 6, Yamagata teaches a third sheet (i.e. item 11, synthetic resin tape) is joined to the mesh sheet on the exterior surface of the bag to seal the folded portion of the first thermoplastic sheet to the mesh (see Figure 5 A) *and* also teaches a similar thermoplastic sheet may be on the *interior* of the surface of the bag, albeit not in combination with a second sheet as recited in claims 1-4 (See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation). However, it would have been obvious to modify the embodiment of Figure 5(A) such that the third sheet is on the

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interior of the bag since one would have been substituting one location for attaching the folded first thermoplastic sheet for another for the same purpose.

Regarding claim 7, the first sheet is positioned on the exterior surface of the mesh sheet at the first seal (i.e. 12 a in Figures 1 (A) and 5 (B)).

Regarding claim 8, the third sheet (item 11) is smaller than the first (item 2/8/9)

Regarding claim 9, Yamagata teaches a third sheet (i.e. item 11, synthetic resin tape) is joined to the mesh sheet on the exterior surface of the bag to seal the folded portion of the first thermoplastic sheet to the mesh (see Figure 5 A) *and* also teaches a similar thermoplastic sheet may be on the *interior* of the surface of the bag, albeit not in combination with the features recited in claims 1-4 (See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation). Therefore it would have been obvious to modify the embodiment of Figure 5(A) such that the third sheet is on the interior of the bag since one would have been substituting one location for attaching.

the third sheet is joined to the first and mesh by two portions 12 a in Figures 1 (A) and 5 (B) which are the first and third seals, and thus the first sheet is on the exterior surface of the mesh at the first seal as recited in claim 10.

Regarding claim 10, the first sheet is positioned on the exterior surface of the mesh sheet at the first seal (i.e. 12 a in Figures 1 (A) and 5 (B)).

Regarding claim 11, the third sheet (item 11) is smaller than the first (item 2/8/9 in Figures 1(A) and 5(A)).

Regarding claim 12, item 12 a, the first seal line is located close to the first end of both mesh and first sheets (See Figure 5(A)).

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) as applied to claims 12 and 1 above, respectively, in Interpretation 1, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

Although Yamagata teaches the mesh lines are diagonal and are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify Yamagata and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) as applied to claim 1 above, Interpretation 2, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

Although Yamagata teaches the mesh lines are diagonal and are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify Yamagata and include parallel and perpendicular seal since one would have

been substituting one known produce bag mesh sheet orientation for another for the same purpose.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) as applied to claim 1 above, Interpretation 1 and Interpretation 2, further in view of Welles (US 4099666).

Although Yamagata is silent in teaching bunching the bag, it was well known feature in the art to do so with bags having similar physical features. Welles is relied on as evidence of the conventionality of providing two sheets, one folded over the other and a second sheet providing wicket holes, similar to Yamagata item 31 in Figure 5A, wherein the bag is also provided with a bunching member. Welles teaches the wicket holes are used for holding the bag while filling and the bunching member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member on the bag since one would have been substituting one closing means for another for a food multilayer food bag.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5,14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Fox et al. (US 6024489).

Regarding claims 1-5, Application '211 claims an onion bag formed by a thermoplastic sheet and a mesh sheet, sealed together along the edges of the sheets and one end having the mesh sheet spaced from one bag end and one bag end being formed by folding over the thermoplastic sheet and a transverse seal across the width of the bag (i.e. claimed as a seal line to form a header), as recited in claims 1,2 and 5. However, '211 does not claim a second thermoplastic sheet as recited in claim 1.

Fox et al. also teach onion bags with mesh and thermoplastic wherein the thermoplastic is folded over the mesh sheet is relied as evidence of the conventionality of further providing a second thermoplastic sheet and a second seal between the mesh and second sheet (see Figure 4C), as recited in claim 1 and a third seal between the second and first sheets as recited in claims 3 and 4 to provide a location for placing the bags on wicket pins (Abstract, Figures 4, 4A-C).

Therefore it would have been obvious to modify '211 and include a second sheet that is sealed with the mesh and first sheets, since this second sheet may serve as a location for placing bags on wicket pins, and one would have been substituting one end bag design for another for the same purpose: a produce bag.

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This is a provisional obviousness-type double patenting rejection.

Regarding claim 14, although application '211 does not claim the mesh comprises strands parallel and perpendicular to the edges, this is a conventional mesh sheet design as shown by Fox et al. in Figure 10. Therefore, it would have been obvious to modify '211 to include mesh strands parallel and perpendicular to the edges, since one would have been substituting one type of mesh pattern for another for a produce bag comprising a thermoplastic sheet and a mesh sheet.

This is a provisional obviousness-type double patenting rejection.

Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A).

Regarding claims 1-5, Application '211 claims an onion bag formed by a thermoplastic sheet and a mesh sheet, sealed together along the edges of the sheets and one end having the mesh sheet spaced from one bag end and one bag end being formed by folding over the thermoplastic sheet and a transverse seal across the width of the bag (i.e. claimed as a seal line to form a header), as recited in claims 1,2 and 5. However, '211 does not claim a second thermoplastic sheet as recited in claims 1,3,4.

However, Yamagata are relied on as evidence of a similar produce bag wherein a second thermoplastic sheet is included. Yamagata teaches a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (item 30) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata teaches a first seal (item 12 a) close to the first end of the mesh sheet (item 3) and first

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end of the first thermoplastic sheet (item 8/9) as recited in claim 2 (See Figure 5A), and the first sheet folds over the mesh sheet (item 8/9 folds over to seal at item 12 a). Yamagata also teaches a second seal (item 5c furthest from 10(a)) and a third as recited in claims 3 and 4(i.e. item 5c closest to 10(a)) between the first sheet (item 2) and a second thermoplastic sheet providing strength for a hole (item 30), and the first sheet (item 2/10a,b) extending beyond the mesh sheet (item 3) to lie against the second sheet ( item 2 extends beyond item 3 to lie against item 30 at item 10a in Figure 5B) (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030).

Therefore, it would have been obvious to include a second sheet since Yamagata teaches this is used to provide strength for a wicket hole and one would have been substituting one wicket hole design for another for a produce bag having a mesh and thermoplastic sheet.

This is a provisional obviousness-type double patenting rejection.

Regarding claims 6-12, Application '211 claims the first sheet is positioned on the exterior surface of the mesh sheet at the first seal , as recited in claims 7 and 10, does not claim a third sheet as recited in claims 6 ,8, 9, and 11, but Yamagata is relied on as evidence of the conventionality of providing a third sheet. Yamagata teaches a third sheet (i.e. item 11, synthetic resin tape, which is smaller than the first sheet as recited in claims 8 and 11) is joined to the mesh sheet on the exterior surface of the bag to seal the folded portion of the first thermoplastic sheet to the mesh (see Figure 5 A) and also teaches a similar thermoplastic sheet may be on the *interior* of the surface of the bag, albeit not in combination with a second sheet as recited in claims 1-4 (See Figures 1A

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and 1B and paragraphs 0009 to 0020 of the English translation). Therefore, it would have been obvious to modify the design of '211 such that the third sheet is on the interior of the bag to assist in sealing the lower portion of the bag since one would have been substituting one means for attaching the folded first thermoplastic sheet to the mesh sheet for another for the same purpose.

Regarding claim 12, Application '211 claims the first seal line is located close to the first end of both mesh and first sheets .

This is a provisional obviousness-type double patenting rejection.

Claim 13 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A), further in view of Fox et al. (US 6024489).

Although Application '211 does not recite the mesh lines are perpendicular and parallel to the edges, Fox et al. (See Abstracts and Figures) are relied on as evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify '211 and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

This is a provisional obviousness-type double patenting rejection.

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Claim 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Fox et al. (US 6024489), further in view of Welles (US 4099666).

Although '211 does not claim bunching the bag, it was well known feature in the art with bags having similar physical features. Welles is relied on as evidence of the conventionality of providing two sheets, one folded over the other and a second sheet providing wicket holes wherein the bag is provided with a bunching member. Welles teaches the wicket holes are used for holding the bag while filling and the bunching member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member on the bag of '211 since one would have been substituting one closing means for another for a food multilayer food bag.

This is a provisional obviousness-type double patenting rejection.


### **Conclusion**


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nielson ( US 2349672) teaches an outer bag folded over an inner bag. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
May 14, 2002

  
**MILTON I. CANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**